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COPY MAILED

AUG 15 2008

In re Application of	:	
Rogall, et al.	:	ON PETITION
Application No.: 10/521,615	:	
Filed: February 9, 2006	:	
Attorney Docket No.: 129494-4	:	

This is in response to the petition under 37 CFR 1.47(b), filed June 16, 2008. The petition will be treated as a petition under CFR 1.183, requesting waiver of 37 CFR 1.67, which requires all of the joint inventors to execute a supplemental declaration.¹

The petition under 37 CFR 1.183 to waive 37 CFR 1.67 is **DISMISSED**.

The petition under 37 CFR 1.47(a) is **DISMISSED AS MOOT**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. Any response should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.183 to waive 37 CFR 1.67" and may include an oath or declaration executed by the inventor. **Failure to respond will result in abandonment of the application.**

While this waiver petition is not a petition under 37 CFR 1.47, it is evaluated in much the same way a Rule 47 petition is. Therefore, a grantable petition requires:

A grantable petition under 37 CFR 1.47(b) requires:

- (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration;
- (2) an acceptable oath or declaration;
- (3) the petition fee;

¹ Once an application has received a fully executed oath or declaration and been placed on the files for examination, the provisions of 37 CFR 1.47 no longer apply. Rather, the remedy for treating an inventor's refusal or unavailability to sign a supplemental oath or declaration is waiver of 37 CFR 1.67. See MPEP 603.

- (4) a statement of the last known address of the non-signing inventor;
- (5) proof of proprietary interest; and
- (6) proof of irreparable damage.

This petition lacks items (2), and (5) set forth above.

As to item (2), an oath or declaration for the patent application in compliance with 37 CFR 1.63 and 1.64 has not been presented. The declaration has not been signed by a properly empowered representative of the party in interest. **No one** has signed the declaration. An oath or declaration in compliance with 37 CFR 1.63 and 1.64 listing the inventors' information, signed by a properly empowered representative of the party in interest on behalf of the non-signing inventors is REQUIRED. See MPEP 409.03(b).

MPEP 409.03(b) states that typically when a corporation is the party in interest, an officer should sign the declaration and provide his/her title. Where an oath is signed by a registered attorney on behalf of a corporation, either proof of the attorney's authority in the form of a statement signed by an appropriate corporate officer must be submitted, or the attorney may simply state that he is authorized to sign on behalf of the corporation. The person executing the declaration must state his/her relationship to the inventors as required by 37 CFR 1.64.

As to item (5), petitioner has failed to show or provide proof that General Electric Company has sufficient proprietary interest in the subject matter to justify the filing of the application (see MPEP 409.03(f)). Per MPEP 409.03(f): If the application has been assigned, a copy of the assignment (in the English language) must be submitted. It is noted that the assignment referenced in the petition, recorded at Reel 017543, Frame 0458, is **not** an assignment between General Electric Company (or its predecessor in interest) and the two joint inventors.

Acceptable proof of proprietary interest would include a copy of the employment agreement between the non-signing inventors and the party in interest, a copy of an assignment agreement showing that the invention disclosed in the application is assigned to the party in interest, or a legal memorandum signed by an attorney familiar with the law of the jurisdiction stating that a court of competent jurisdiction would by the weight of authority in that jurisdiction award the title of the invention to the party in interest.

The \$400.00 Rule 183 petition will be charged to deposit account no. 07-0849.


Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop PETITION
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Post Office Box 1450
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By hand: U.S. Patent and Trademark Office
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By FAX: (571) 273-8300 - ATTN: Office of Petitions

Telephone inquiries should be directed to the undersigned at (571) 272-3230.


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